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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-217459

DATE: May 24, 1985

MATTER OF:

Yamas Construction Co., Inc.

DIGEST:

1. Protester has the burden of proving that agency's estimates of work, which form the basis for designations of work items in a solicitation as within Davis-Bacon Act or Service Contract Act, are not based on the best information available, otherwise misrepresent agency's needs, or result from fraud or bad faith. Burden is not sustained where protester has not refuted agency statement that it relied on experience under prior contract, containing admittedly poor estimates, to correct and improve current solicitation.
2. GAO finds no requirement in the Federal Acquisition Regulation or Army regulations that there be separate solicitations and contracts for Service Contract Act and Davis-Bacon Act work.

Yamas Construction Co., Inc. (Yamas) protests the Department of the Army's (Army) classification of work under invitation for bids (IFB) No. DAKF03-85-B-0001 as falling within either the Davis-Bacon Act (DBA), 40 U.S.C. § 276(a) (1982), or the Service Contract Act (SCA), 41 U.S.C. § 351 et seq. (1982), and the Army's inclusion of both DBA and SCA covered items in the same solicitation. The IFB was issued by the Army, Fort Ord, California, for the basic maintenance of family housing units, including complete interior repainting and floor refinishing. This procurement is the successor to a prior contract for similar services on which Yamas is the incumbent.

The protest is denied.

The DBA requires that federal contracts over \$2,000 for construction, alteration, or repair, including painting

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and decorating of public buildings or public works, in the United States contain a clause requiring that contractors pay scales be based upon prevailing wages in the locality as determined by the Secretary of Labor. 40 U.S.C. § 276a, supra. Similarly, the SCA requires that federal contracts in excess of \$2,500 include a provision specifying the minimum wages to be paid to various classes of service employees as determined by the Secretary of Labor in accordance with prevailing rates in the locality. 41 U.S.C. § 351 et seq., supra. The predecessor contract, originally covered by the SCA, was modified by the Army to provide DBA coverage pursuant to a May 4, 1983, Department of Labor determination that certain items of work fell with the coverage of the DBA.

Yamas, based on its experience under the prior contract, alleges that the Army has underestimated the quantity of repair work to be performed under the current solicitation in order to avoid DBA requirements. In addition, relying on a June 7, 1983 Army letter which states that a new Army regulation would be issued which would prohibit contracts from covering both SCA and DBA work, Yamas contends that the Army is required to have separate solicitations and contracts for SCA and DBA work, and has requested that the solicitation be canceled.

The Army acknowledges that it had problems with forecasting the quantity of work to be performed under the predecessor contract, because it had no prior experience upon which to base its estimates. However, the Army states it applied its experience gained in that contract in preparing this solicitation to correct and improve upon the estimates contained in the prior contract. The Army states that based on experience under the prior contract, the estimated dollar value of specific work items, and on the definition of "service contract" in § 37.101 of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 37.101 (1984), the total estimated value of the procurement is \$2,722,892, of which \$1,245,365 (46 percent) is DBA work and \$1,477,527 (54 percent) is SCA work. The Army, citing Gulf Coast Defense Contractors, Inc., B-212641, Feb. 28, 1984, 84-1 CPD ¶ 243, argues that these estimates are sufficient because the IFB is only required to have "reasonably accurate representations of anticipated actual needs based on the information available."

With regard to the protester's allegation that separate solicitations are required, the Army states that the FAR does not require separate solicitations and that no Army regulation has been issued which would preclude the inclusion of SCA and DBA work in the same solicitation.

Our Office has recognized that the responsibility for determining whether DBA provisions should be included in a particular contract rests primarily with the contracting agency which must award, administer and enforce the contract. 44 Comp. Gen. 498, 502 (1965). It therefore follows that the determination of whether items of work are basic maintenance falling within the coverage of the SCA or are more in nature of construction, alteration or repair within the scope of the DBA, is a matter of agency judgment.

In challenging the Army's estimates, Yamas has the burden of proving that the DBA and SCA work estimates in the IFB are not based on the best information available, otherwise misrepresent the agency's needs, or result from fraud or bad faith. JETS Services, Inc., B-190855, Mar. 31, 1978, 78-1 CPD ¶ 259. There is no requirement that estimates be absolutely correct. The Army is only required to solicit bids on the basis of estimated quantities that are based on the best information available and are reasonably accurate representations of anticipated actual needs. Ace Van & Storage Co.; Windward Moving & Storage Co., B-213885, B-213885.2, B-214208, July 27, 1984, 84-2 CPD ¶ 120.

We find that although Yamas' allegations may be relevant to the circumstances that existed during performance of the earlier contract, they do not support a finding that the Army's work estimates in this solicitation are unreasonable. The record indicates that the Army used the best information available--its 2-1/2 years of experience with the predecessor contract--in deriving the estimates. Yamas has failed to establish that there is better information available, or that the Army has misrepresented the agency's needs, or acted fraudulently or in bad faith.

Moreover, contrary to the protester's contention that separate solicitations are required for DBA and SCA work, we find no such requirement in the FAR or Army regulations. We have recognized that DBA and SCA work may properly be performed under the same contract. See Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687, and Gulf Coast Defense Contractors, Inc., supra. Consequently, we find no merit in this contention.

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The protest is denied.

for Seymour E. Fine
Harry R. Van Cleve
General Counsel